

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ATARI, INC.,

a Delaware corporation, and

MIDWAY MFG. CO.,

an Illinois corporation,

Plaintiffs,

vs.

NORTH AMERICAN PHILIPS
CONSUMER ELECTRONICS CORP.,

a Tennessee corporation, and

PARK TELEVISION d/b/a/
PARK MAGNAVOX HOME ENTERTAINMENT
CENTER,

an Illinois partnership, and

ED AVERETT,

an individual,

Defendants.

Civil Action No.
81 C 6434
VOL. II

DEPOSITION OF HIDEYUKI NAKAJIMA

1 BE IT REMEMBERED: That pursuant to subpoena in
2 re deposition, and by stipulation of respective counsel, and
3 on Wednesday, the 11th day of August, 1983, commencing at the
4 hour of 9:15 a.m. of said day, before me, Marcia Lynne Hunter,
5 C.S.R., License Number C-2801, a Notary Public, personally
6 appeared HIDEYUKI NAKAJIMA, called as a witness herein, at
7 the offices of Pillsbury, Madison & Sutro, 333 West Santa
8 Clara Street, San Jose, California, and having been previously
9 duly sworn by me, was examined as a witness in said cause.

APPEARANCES

For PLAINTIFF
ATARI, INC.:

KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601
By: DAVID E. SPRINGER, ESQ.

For PLAINTIFF
MIDWAY MFG. CO.:

WELSH & KATZ
Suite 1625
135 South LaSalle Street
Chicago, Illinois 60603
By: A. SIDNEY KATZ, ESQ.

For DEFENDANTS
NORTH AMERICAN
PHILIPS CONSUMER
ELECTRONICS CORP.,
PARK TELEVISION
dba PARK HOME
ENTERTAINMENT
CENTER & ED AVERETT:

REUBEN & PROCTOR
19 South LaSalle Street
Chicago, Illinois 60603
By: JAMES H. ALESIA, ESQ.
and
NEUMAN, WILLIAMS, ANDERSON & OLSON
77 West Washington Street
Chicago, Illinois 60602
By: JAMES T. WILLIAMS, CO-COUNSEL
and

THOMAS A. BRIODY,
CORPORATE PATENT COUNSEL
North American Philips Corporation
580 White Plains Road
Tarrytown, New York 10591

For NAMCO-AMERICA
& HIDEYUKI NAKAJIMA:

LIMBACH, LIMBACH & SUTTON
2001 Ferry Building
San Francisco, California
By: KARL A. LIMBACH, ESQ., and
RONALD L. YIN, ESQ.

and

NAMCO-AMERICA, INC.
343 Gibraltar Drive
Sunnyvale, California 94086
By: DENNIS WOOD, VICE PRESIDENT &
GENERAL COUNSEL

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(All exhibits retained by Mr. Alesia.)

1 HIDEYUKI NAKAJIMA,

2 having been previously duly sworn by the Notary Public to tell
3 the truth, testified further as follows:

4 EXAMINATION BY MR. ALESIA (resumed)

5 Q Mr. Nakajima, this is the continuation of the deposition
6 that was started yesterday. You understand you are still
7 under oath and still obligated to tell the truth under threat
8 of perjury?

9 A Yes.,

10 Q Mr. Nakajima, did you have occasion to write David
11 Marofske, the president of Midway Manufacturing Company, in
12 December of 1981, with regard to requesting that some of the
13 rights in Pac-Man be returned to NAMCO, Ltd., and NAMCO-
14 AMERICA?

15 A I have.

16 Q Did you do that?

17 A I don't know. I don't remember. I might have.

18 MR. ALESIA: Ms. Reporter, will you mark this as
19 Defendants' Exhibit No. 115, please, a letter dated December
20 24th, 1981, on the letterhead of NAMCO-AMERICA to David
21 Marofske from Mr. Nakajima.

22 MR. SPRINGER: Off the record a second.

23 (Discussion off the record.)

24 (WHEREUPON, a letter dated December
25 24th, 1981, on the letterhead of NAMCO-
26 AMERICA, to David Marofske from Mr.
 Nakajima, was marked as Defendants'
 Exhibit No. 115 for identification.)

27 Q (By Mr. Alesia) Mr. Nakajima --

28 MR. SPRINGER: Do you have just one copy?

1 Q (By Mr. Alesia) -- will you look at Exhibit 115.

2 A Yes.

3 MR. LIMBACH: Counsel, I notice that the document
4 is stamped confidential, trial counsel only. Does the court
5 order under which this was produced permit Mr. Briody to be
6 here?

7 MR. ALESIA: Well, if you -- if Mr. Katz wishes to
8 abide by the court order in Chicago regarding this matter,
9 as limited to trial counsel only, I would also ask everybody
10 who is not a trial counsel in the case to exclude themselves,
11 which would include Mr. Wood. Especially Mr. Wood, since he
12 is a potential deponent in this case.

13 MR. LIMBACH: Mr. Wood is here as counsel for the
14 witness and I think has the right to stay for that purpose.

15 MR. ALESIA: I thought that was your function. He
16 is not a trial counsel in this case. You are the counsel for
17 the witness. This is --

18 MR. LIMBACH: Well, your orders between -- relate
19 to trial counsel --

20 MR. ALESIA: It's not my order.

21 MR. KATZ: I would like to stay with the order that
22 was entered by the court, but on this particular document,
23 this is a document that originated with NAMCO-AMERICA. And
24 since Mr. Wood is counsel for NAMCO-AMERICA. I think it would
25 be appropriate for him to stay in the room, but I think I
26 would like to have Mr. Briody leave.

27 MR. ALESIA: Well, Mr. Katz, you can't have it both
28 ways. The stamp -- this is the second order and it's stamped

1 by you "Confidential, trial counsel only."

2 MR. KATZ: That's right.

3 MR. ALESIA: Mr. Wood is a potential deponent. He
4 is not trial counsel of record for this case. The witness is
5 represented by an outside attorney here. I have no objection
6 if he stays. But, I mean, you can't have it both ways.

7 MR. KATZ: Well, I think you are missing the point,
8 Mr. Alesia, because the order was for the protection of con-
9 fidential information. This is information from NAMCO.
10 Dennis Wood works for NAMCO. He's counsel, house counsel, for
11 NAMCO and he's an officer of NAMCO.

12 MR. LIMBACH: More importantly, he is counsel to
13 the witness, who is attending here today.

14 MR. ALESIA: What is your function here then,
15 Counsel? I thought that you were outside counsel for the
16 witness.

17 MR. LIMBACH: That's right.

18 MR. ALESIA: I have no objection if you stay and
19 along with your associate or outside counsel. I object to
20 Mr. Wood being here, because Mr. Wood is a potential deponent
21 in this case, and he is not trial counsel.

22 MR. LIMBACH: Your order in Chicago relating to
23 restrictions of things between the parties is not an order,
24 as far as I know, that is binding on a third party witness
25 who you are dragging into a deposition here.

26 So, we are here as a witness, and we will behave our-
27 selves as a witness, and whatever you have as an order re-
28 lating to trial counsel only I understand applies between the

1 parties and what they're doing.

2 There is a separate order entered by our local court
3 that affects NAMCO, and we'll live by that.

4 MR. ALESIA: It's my understanding that separate
5 order that affects NAMCO also is the same type of order as
6 what is entered in the court in Chicago, that there's a two-
7 tier order, one for confidential documents and one for con-
8 fidential, trial counsel only.

9 MR. LIMBACH: I understand the document that you
10 have marked as an exhibit here is a document produced by
11 Midway.

12 MR. ALESIA: That's correct.

13 MR. LIMBACH: And it's got a confidential, trial
14 counsel only designation applied by Midway.

15 MR. ALESIA: That's correct also.

16 MR. LIMBACH: Okay. I would expect you to live by
17 that.

18 MR. ALESIA: I am.

19 MR. LIMBACH: That's between you and Mr. Katz,
20 though.

21 MR. ALESIA: That's right.

22 MR. SPRINGER: Why don't we go off the record a
23 second.

24 (Discussion off the record.)

25 (WHEREUPON, Mr. Briody left the
26 deposition room.)

27 (WHEREUPON, the following pages
28 126 through 216 of the deposition of
Mr. Nakajima are designated Sensitive
Confidential and are bound separately
from this portion of the deposition.)

COUNTY OF SANTA CLARA)

Santa Clara County
My commission expires Apr. 22, 1985

I, Marcia Lynne Hunter, a Notary Public in and for the County of Santa Clara, State of California, hereby certify that the witness in the foregoing deposition, named HIDEYUKI NAKAJIMA, was duly sworn by me to tell the truth, the whole truth, and nothing but the truth, in the within entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, to the best of my ability, and was thereafter transcribed into typewriting under my direction and supervision.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

Date: August 25, 1983

Marcia Lynne Hunter
Marcia Lynne Hunter, C.S.R.
License Number C-2801

The signing of the deposition by the deponent was waived by stipulation at the time of the taking of the deposition.

The deponent personally appeared on the _____ day of _____ 19____, and was given an opportunity to read the deposition. Thereafter, and upon the same date, the deposition was signed by the deponent.

Upon completion of the transcript of the deposition, the deponent was notified that it was ready for signature, but the deposition was not signed by the deponent for the following reason: Deponent did not appear
Date: 9-30-82